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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,314	06/13/2005	Loren Lantz	M-1103	4108
54964	7590	09/21/2006	EXAMINER	
TYCO HEALTHCARE - EDWARD S. JARMOLOWICZ			VERBITSKY, GAIL KAPLAN	
15 HAMPSHIRE STREET			ART UNIT	PAPER NUMBER
MANSFIELD, MA 02048			2859	

DATE MAILED: 09/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/538,314		LANTZ ET AL.	
	Examiner		Art Unit	
	Gail Verbitsky		2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>04/03/2006</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-6, 17-18 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated Fraden et al. (U.S. 57950670 [hereinafter Fraden]).

Fraden discloses in Figs. 3-5 a probe cover comprising a tubular body 21 having a proximal opening configured to receive a distal end of a thermometer. The tubular body of the cover has a proximal end and a distal end. The distal end has a substantially arcuate shape. The distal end is enclosed in a film 10, the tubular body has a fold (rib) 16 at its distal end about inner circumference (circumferential edge). The fold 16 abuts against (engage with) a rim of the probe such that there is an air gap between the film/ window 10 and the distal end of the probe. Thus, the distal end of the probe is spaced from the window 10.

For claim 2: since the rib is of circumferential, in a broad sense, it can be considered that there are a lot of point ribs connected in between.

For claims 3-6: the rib/ fold 16 has a longitudinal portion (along the body/ parallel to the longitudinal axis) and a transverse portion (toward or perpendicular to the longitudinal axis of the body).

For claim 17: the tubular body is tapered from the proximal end to the distal end.

3. Claim 19 is rejected under 35 U.S.C. 102(b) as being anticipated by WU (U.S. 6238088).

Wu discloses in Figs. 3-4 a device/ first probe cover having a tubular body of tapered configuration from a proximal end to a distal end, the distal end defines an opening to receipt a probe of a tympanic thermometer. The device also includes a body portion having a plurality of protuberances 15 being proximally spaced from the distal end and disposed circumferentially about a wall of said body portion. The protuberances are disposed on the outside surface and configured to nest a second probe cover on top

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of the first probe cover, the protuberances disposed on the inside surface are configured to nest the third probe cover when it inserted inside of the first probe cover, as shown in Fig. 4.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 7-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fraden in view of Wu.

Fraden discloses the device as stated above.

Fraden does not explicitly teach ribs projecting from an inner surface and inner and outer protuberances, as stated in claims 7-16.

Wu discloses in Figs. 3-4 a device/ first probe cover having a tubular body of tapered configuration from a proximal end to a distal end, the distal end defines an opening to receipt a probe of a tympanic thermometer. The device also includes a body portion having a plurality of protuberances/ plurality of longitudinal ribs 15 being proximally spaced from the distal end and disposed circumferentially about a wall of said body portion. The protuberances are disposed on the outside surface and configured to nest a second probe cover on top of the first probe cover, the protuberances disposed on the inside surface are configured to nest the third probe cover when it inserted inside of the first probe cover, as shown in Fig. 4.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device, disclosed by Fraden, so as to have more longitudinal ribs/ protuberances on inner and outer surface of the probe body, as taught by Wu, so as to provide nesting for other probes, in order to provide a compact and safe storage the cover probes when they are not placed on the probe.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 and not mentioned above disclose related devices and methods.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gail Verbitsky whose telephone number is 571/ 272-2253. The examiner can normally be reached on 7:30 to 4:00 ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on 571/ 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GKV

Gail Verbitsky
Primary Patent Examiner, TC 2800



September 12, 2006